

Approved as Submitted: July 16, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JULY 2, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 5:02 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate, Mayor/Agency Chairperson Kennedy
Late: Mayor Pro Tempore/Vice-chair Chang (arrived at 5:35 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

WORKSHOP:

1. AUTO DEALER STRATEGY WORKSHOP

Director of Business Assistance and Housing Services Toy presented the staff report.

Council Member Sellers said that prior to his being elected to Council office; the Planned Unit Development (PUD) zoning ordinance was specific to restrict other auto dealerships in the area where the Chevrolet dealership is located.

Council Member Tate recommended that a survey of area residents be conducted to ascertain comments relating to the Chevrolet auto dealership.

Council Member Sellers concurred that a survey should be conducted.

Mayor Kennedy inquired as to the process to amend the PUD. He expressed concern with the City agreement with the Chevrolet residential neighborhood that this would be the only auto dealership in the area. He expressed concern that discussing the opening of Walnut Grove Drive would be similar to the situation experienced with the Murphy Avenue residents, opening the door to similar fears and concerns.

Council Member Carr felt that there was a difference with the Walnut Grove location as it was his belief that the Walnut Grove circulation could be improved with development. He felt that the neighborhood would see the realignment of Walnut Grove as a positive aspect as opposed to the concerns raised by the Murphy Avenue residents.

Council Member Tate felt that it would be helpful to have a layout of the proposed Walnut Grove Drive alignment.

Council Member Sellers said that he would like to determine if there is an area that would support an auto dealership(s). He felt that this information needs to be known before moving forward. He inquired how the PUD update would be developed.

Mr. Toy said that the Walnut Grove PUD is based on a road alignment. The Walnut Grove PUD would necessitate a General Plan Amendment, rezoning amendment and the development of PUD guidelines, should the Council support proceeding with a Walnut Grove PUD amendment. He said that in talking with the Economic Development Committee (EDC), it is not being recommended that the City wait for the public hearing to address rezoning of the property. The EDC recommends engaging the community by means of community meetings. He said that there would be benefits to Walnut Grove area residents with the realignment of Walnut Grove.

Council Member Sellers felt that it would be worth exploring a Walnut Grove PUD development, invited/including the area residents in discussions to help with the development of the area.

Council Member Carr agreed that community meetings need to take place before bringing the Walnut Grove PUD before the Council for public hearing(s).

Council Member Tate noted that the Council would not have answers until plans are reviewed.

Mayor Kennedy stated that he has always favored the Cochrane Road area for an auto dealership due to neighborhood concerns in other areas of the City, especially with existing traffic along Dunne Avenue. His personnel preference would be to site auto dealerships at Cochrane Road and Tennant Avenue. He said that he would be open to alternative locations, but not as primary locations.

Council Member Sellers said that the Council learned that auto dealerships are the least impactful uses compared to other commercial uses. He recommended that low intensity uses be considered as part of a study. He noted that the Council has been consistent in its desire to bring in a few auto dealerships into the community and not develop an auto mall district. He felt that this fact needs to be reemphasized. Also, of concern to the Council is the quality of the auto dealership to be considered.

Council Member Tate said that screening auto dealerships would be important.

Mayor Kennedy noted that the current auto dealership strategy prioritizes locations. He stated that he would prefer not to prioritize locations. If the Council is to prioritize locations, he recommended that locations other than Dunne Avenue be identified. He suggested that the Council discuss which area(s) would work best.

Council Member Tate stated that it was his belief that proximity is important to auto dealers.

Council Member Carr felt that the Dunne Avenue location was decided upon when the Dan Gamel RV located on Condit/Dunne. He felt that the Council has narrowed the location for auto dealership(s) to the Walnut Grove area or the area behind the former K-Mart site. He recommended that the Council gauge neighborhood support of an auto dealership. He felt that the size of the area was important and that it was as important for the City to indicate that it was not supporting large acre dealerships. He said that the Council needs to know the minimum acreage needed by auto dealers. He would agree to prioritize locations but felt that the City has identified the auto dealership areas.

Frank DeRose, representing the DeRose family, stated that the DeRose family is the owner of the largest parcel on Walnut Grove. He pointed out that the prioritization was the result of a consultant hired by the City. The Consultant identified area A as being the most desirable area for an auto dealership(s). He felt that the Council would be disregarding the consultant's input/recommendation if it proceeds with other areas. He said that he has had a lot of interest expressed with site number 4 of the Walnut Grove PUD. He indicated that the Roger Starbach's real estate company is interested in talking to the family about the site. A real estate investment trust has also expressed interest on the site. Therefore, there is substantial interest on this site. He indicated that auto dealerships will locate where they want to locate. He stated that the DeRose family is supportive of having this project move forward as there is an agreement with various property owners. However, he could not speak for Sean Simonson or the Kawashimas.

Sean Simonsen said that the Chevrolet dealership consists of 4.1 acres and that it is barely enough area for the auto dealership. He said that money is made in the service/repair aspect of an auto dealership. He said that Smyth Volvo will not relocate to Morgan Hill as they have rights to the entire county. He said that you might be able to squeeze 3 dealerships in the Walnut Grove area. He noted that the road will not be installed/aligned until a use is approved and built.

Sunday Minnich stated that the Chamber of Commerce supported the auto dealership strategy and area A as the preferred location, as adopted by the Council over a year ago. She recommended that everything be done to retain area A as an auto dealership(s) location. She noted that auto dealerships like to cluster together.

Mayor Kennedy indicated that he would agree to eliminate the 19 acres on Condit Road that were recently included in the City's USA as an auto dealership(s) area.

Mayor Pro Tempore Chang entered and took her seat on the dais.

Council Member Tate inquired whether an auto dealership would be interested in the site adjacent to the former Kmart facility.

Mr. Toy said that the Ford dealership liked the K-mart area for its visibility but was concerned with access to the site.

Council Member Sellers stated that he did not have a problem adding the area adjacent to the former K-Mart site to the auto dealership strategy if it is attractive to individuals.

City Manager Tewes said that one of the advantages of identifying several areas for auto dealerships is the fact that it would allow flexibility in negotiating land deals.

Mr. Simonson said that he had a dealer interested in the site adjacent to the K-Mart site but that they were concerned that they would lose a substantial portion of the land in dedication to the City.

Mayor Kennedy inquired whether the Council would be moving forward with a strategy that would support 3-4 auto dealerships. He stated that he would not include Harley Davidson or Dan Gamel's RV as part of the strategy.

Mayor Pro Tempore Chang felt that the Capital Expressway area is an auto district region. She noted that the Capital Expressway auto district is not located by the freeway or residential neighborhoods. She stated that the only reason she did not support the Ford Dealership on Condit and Dunne Avenue was due to its proximity to a residential area. She said that she would support six dealerships in non residential areas formed into a district, if well planned and perpendicular to the freeway.

Mayor Kennedy felt that the City would need to conduct some form of neighborhood outreach, no matter the location of the sites, even if the City needs to hire a firm to assist with neighborhood outreach.

Mayor Pro Tempore Chang recalled that Al Chu's Chevrolet dealership request had area residents come out in opposition. In the approval of the Chevrolet dealership approval, the Council stipulated that it would not approve another auto dealership in the PUD.

City Manager Tewes clarified that in order to allow another auto dealership on the Walnut Grove area; it would require an amendment to the General plan and the PUD.

Council Member Sellers stated that he would be comfortable with the addition of 2-3 auto dealerships as part of the strategy.

Mayor Kennedy felt that 2-3 additional auto dealerships would be appropriate and that more than 2-3 should require additional analysis.

Council Member Carr said that he would hate for the City to develop a "Capital Expressway" auto district somewhere in Morgan Hill when the City already has an area developed with auto dealerships. He felt that it would be bad planning to develop other districts. He felt that 2 additional auto dealerships would be an appropriate number.

Mayor Pro Tempore Chang felt that 2 auto dealerships would be sufficient in area A. However, she did not believe that area A was the right place for additional dealership(s).

Ms. Minnich said that if you look at the Capital Expressway area, residential neighborhoods are closer to the auto dealerships than they are at Dunne and Condit. She felt that other areas in Morgan Hill would have residential neighborhoods close to auto dealerships as well.

City Manager Tewes said that staff could return to the Council, transferring general comments into a policy direction for Council consideration.

Council Member Carr said that the Council has had the auto dealership strategy in place for two years. He felt that the Council has told staff, property owners, and others its preferred auto dealership locations.

Frank DeRose said that in order to move forward with site 4, a general plan amendment and a PUD amendment would be required, working with property owners. He wanted to know how property owners would work with the City to determine direction.

Council Member Carr said that the City has developed a process and that staff would be talking to property owners. He said that the process has started and that staff is inquiring whether the Council has changed its strategy, noting that it does not appear that the Council has changed its strategy.

Mayor Kennedy requested the elimination of “who may want a second store” under the Auto Dealership Strategy, Marketing, Section 1.

Mr. Toy said that the auto dealership list was not meant to be inclusive.

Mayor Kennedy requested that a Chrysler dealership be added to the list. He indicated that he has heard several Council members state that the strategy language is acceptable.

Mr. Simonson felt that realistically, only 2 auto dealerships could be accommodated on the existing Walnut Grove Drive area.

Mayor Pro Tempore Chang said that if the Council majority supports Area A, limiting auto dealerships to 2-3, it would be a Council decision. However, she would not support them in this area

Mayor Kennedy said that the strategy needs to indicate 2-3 more auto dealerships.

Mr. Toy said that staff would return with the strategy for Council consideration

Action: *The Council **Provided** Staff with the above listed comments.*

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Manager/Executive Director Tewes announced the closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/ Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:00 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:00 p.m.

Council/Agency Member Sellers excused himself from the remainder of the meeting.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairperson Kennedy led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Carr reported on the following: 1) Update on the Brian DeVries case. Last Friday, Judge Baines heard the case of the release of Brian DeVries. He indicated that the State Department of Mental Health came to the court room without a new location for Mr. DeVries to reside. There was no discussion of whether Morgan Hill was still a possible location for him. Judge Baines continued the hearing to Thursday, July 10, 2003; 10:00 a.m. at which time the State Department of Mental Health is

suppose to return with a recommendation and location for Mr. DeVries. If not, Judge Baines felt that he would have no choice but to release Mr. Devris with the idea that he would have to find housing on his own; or allow him to go to the state of Washington where his father resides. 2) SCRWA Court Decision - He indicated that all Council members received great news from the South County Wastewater Regional Authority (SCRWA) about the success in a legal case against the Central Coast Regional Water Quality Control Board. He stated that a judge ordered the Board to grant the permit that SCRWA has been requesting for many years. Once the permit is granted, it will become another piece of the overall long term strategy on how the Cities of Gilroy and Morgan Hill will take care of treated water and the disposal of treated water out of the system. 3) Economic Development Committee – The Committee, consisting of Council Member Tate and he, recently reviewed with staff the Request For Concept of downtown proposals. He indicated that staff identified approximately 800 different individuals who should review the proposals. It is his hope that the City will receive requests for concepts on downtown development and that the City will be providing economic development dollars toward this effort. He stated that the concepts are due back at the end of July. If individuals are interested in the concept plans, he recommended that the Business Assistance and Housing Services Department be contacted for copies of the concept plans.

Mayor Kennedy felt that the court ruling was a great decision. This action will allow the Regional Water Quality Control Board to allow the discharge of tertiary treated water into Llagas Creek and then into the Pajaro River during winter months for non potable uses.

CITY MANAGER REPORT

City Manager Tewes stated that the City appreciates the support of the community to conserve water. He indicated that individuals can find out which roads will be closed for the Fourth of July activities by looking at the City's website (morgan-hill.ca.gov).

CITY ATTORNEY REPORT

Acting City Attorney William McClure stated that he did not have a City Attorney's report to present this evening. He indicated that he would be available to the City Council and staff while City Attorney Leichter is on vacation.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor Kennedy congratulated Council Member Steve Tate on his recent appointment as president of the Morgan Hill Rotary.

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy and Council Member Tate requested that item 3 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent, **Approved** Consent Calendar Items 2, 4 - 12, as follows:*

2. **APPROVAL OF MAIN AVENUE/UNION PACIFIC RAILROAD (UPRR) CROSSING AGREEMENT**

Action: **Approved** Main Avenue/UPRR Crossing Agreement, Subject to Review and Approval of City Attorney.

4. **ACCEPT OAK CREEK PARK TENNIS COURT RESURFACING PROJECT**

Action: 1) **Accepted** as Complete the Oak Creek Park Tennis Court Resurfacing Project in the Final Amount of \$28,130; and 2) **Directed** the City Clerk to file the Notice of Completion with the County Recorder's Office.

5. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR 761 DAKOTA DRIVE – MIKE AND JONNA DUNNE**

Action: 1) **Adopted** Resolution No. 5688, Accepting the Public Improvements for 761 Dakota Drive – Mike and Jonna Dunne; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

6. **ADOPT ORDINANCE NO. 1621, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1621, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDIT – HORIZON LAND (THE FORD STORE).

7. **ADOPT ORDINANCE NO. 1622, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1622, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO

ORDINANCE NO. 1568, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE-SINGH TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APN 764-23-054; DAA-00-08: BERKSHIRE - SINGH).

8. ADOPT ORDINANCE NO. 1623, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1623, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1535, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-21: MISSION VIEW-DIVIDEND HOMES TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APNs 728-32-001, 002, 003 & 728-33-001; DAA-01-07: Cochrane-Mission View).*

9. ADOPT ORDINANCE NO. 1624, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1624, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.050 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES.*

10. ADOPT ORDINANCE NO. 1625, NEW SERIES

Action: ***Waived** the Reading, and **Adopted** Ordinance No. 1625, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1564, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-31: CHURCH – SOUTH COUNTY HOUSING TO ALLOW FOR A SIX MONTH EXTENSION OF TIME FOR 36 BUILDING ALLOTMENTS RECEIVED IN THE 2001 RDCS COMPETITION. (APNs 817-02-002, 003, 004, 005, 022, 023 & 038).*

11. SPECIAL CITY COUNCIL MEETING MINUTES FOR MEETING OF JUNE 18, 2003

Action: ***Approved** the Minutes as written.*

12. SPECIAL CITY COUNCIL MEETING MINUTES FOR MEETING OF JUNE 25, 2003

Action: ***Approved** the Minutes as written.*

3. APPROVAL OF SAN PEDRO PONDS JOINT USE AGREEMENT

Mayor Kennedy stated that this is a significant achievement and congratulated the San Pedro Ponds Committee that helped bring this joint use agreement to fruition.

Council Member Tate said that City is excited that this project is moving forward after several delays. He stated that the project has been designed and laid out as a fairly simple project. The project surrounds the pond with low fences so that individuals can access the area as a park. He indicated that the Water District will include a bench in the park. He said that the San Pedro Ponds Committee will be conducting a fund raising effort in order to be able to incorporate additional benches and trees, similar to what was done at Nordstrom Park, to make this an attractive passive park. The Committee is encouraging anyone who wants to get involved as a volunteer and contribute toward this effort to contact him or Dr. Jon Hatakeyama. He stated that a grand opening ceremony is being planned but that a date has not been determined. As the project gets closer to completion a grand opening announcement will be made, indicating that it is hoped to have the ceremony take place sometime in September 2003.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Sellers absent, **Approved** the Joint Use Agreement with Santa Clara Valley Water District for San Pedro Ponds Trail Project, Subject to Review and Approval of City Attorney.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

13. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 18, 2003

Action: **Approved** the Minutes as written.

14. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 25, 2003

Council Member Tate referred to page 186 relating to item 17. The Council discussed Gilroy's need of funding for a sewer trunk. He said that there was a lot of discussion and concern by the Council that were explained by staff later on. He felt that the Council's concerns were real enough that they should be incorporated as part of the record. He requested that the approval of the minutes be continued to allow the City Clerk to incorporate the Councils' concerns.

City Clerk Torrez informed the Council that the Minutes could be amended and return for Council review/approval on July 16, 2003.

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the City Council/Agency Board, on a 4-0 vote with Council/Agency Member Sellers absent, 1) **Continued** the approval of the Minutes to July 16, 2003, and 2) **Directed** the City Clerk/Agency Secretary to incorporate the additional dialogue relating to item 17.*

City Manager/Executive Director Tewes informed the Council that it has a policy not to begin public hearings prior to 7:30 p.m. He said that the Council may wish to consider item 19 at this time.

Action: *It was the consensus of the City Council/Agency Commission to **consider** agenda item 19 at this time.*

Redevelopment Agency Action

OTHER BUSINESS:

19. REQUEST FOR PROPOSALS FOR POLICE FACILITY

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that under discussion is a Statement of Interest (SOI) and Request for Proposal (RFP) process for the Morgan Hill Police Station. He indicated that in April 2003, the Agency Board authorized the issuance of an SOI, a conceptual process as opposed to an RFP process. This was a process that allowed individuals to indicate whether they would be interested in the police facility and what type of concepts they would have for the facility. He indicated that in June the Council's Economic Development Committee (EDC) reviewed the proposal and recommended that the City continue with the RFP process. He stated that the City received three responses to the SOI: 1) El Toro Brewery Company; 2) Page Holdings; and 3) Forst and Pappus. He said that the first two proposals are for a restaurant/brew pub concept and the third is a proposed restaurant. The EDC and staff recommend that all three proposers be invited to participate in a more detailed RFP process so that the Council can receive information on the development operating performas and be able to select developer who has the financial capacity to perform a business plan for the use of the facility. The Council/Agency can review the elevations to see if the design fits the overall image for the downtown plan. The Agency can also ask that individuals identify the specific role of the Agency (e.g., leasing the facility, purchasing the facility, and/or require other assistance from the Agency to make the project work). The City would also ask for a timeline. He recommended that prior to the issuance of an RFP that staff meet with the three proposers as a group to determine what common information would be helpful in the process. At that time, there would be discussion of a timeline for the RFP. It is proposed to issue an RFP in July 2003 and depending on the time line, responses would be due back in August or September. The Agency would make a selection sometime in September or October, entering into an exclusive right to negotiate agreement in November or December. He further recommended that staff be allowed to work with the EDC to review the RFP and help develop the selection process.

Agency Member Tate stated that staff addressed all the points of the EDC.

Agency Member Carr said that the EDC is trying to provide some Agency support in the process (e.g. up to \$20,000 for technical assistance). He said that the EDC would like the individuals who will be submitting RFPs to identify where they need help and how it could be provided. He stated that it has been suggested that this is a long timeline. However, when you look at the timeline of when the building would be made available, he felt that this process falls within that timeline.

Mayor Kennedy noted that staff has both the RFP and Request for Qualification (RFQ) processes listed. He said that it was his understanding that an RFQ would be for a situation where the City has a design

and that the City is requesting a quote on a specific design. He inquired if this was staff's understanding when it put this process together.

Mr. Toy explained that an RFQ is a request for qualifications. He indicated that staff has received some of the qualifications from the three proposals and that the City would receive additional information as part of the RFP process.

Mayor Kennedy recommended that the City request RFQ/RFP to be consistent with what staff is asking for.

Chairman Kennedy opened the floor to public comment.

Gino Acevedo said that he has received bids and found that it would cost approximately \$10,000 to put together an RFP that includes architectural renderings and that this cost is not transferable or recoverable if one does not move forward with the process. He stated that it would be his preference that the City conducts an interview process to receive additional information or proceed with an RFQ if qualifications are on the top of the City's priority list. He noted that the proposals before the Agency are for three different types of restaurants. His proposal is a moderately priced brew pub restaurant with entertainment in the evening. The other brew pub proposal would be a higher end/upscale restaurant proposal. The third proposal would be a Bold Knight type steak house proposal. The Agency could identify which proposal it was leaning toward, saving the others money.

Vice-chair Chang inquired whether Mr. Acevedo was suggesting that the Agency select one proposal based on the SOIs submitted.

Mr. Acevedo suggested that the Agency request more information from the three proposers in an interview type process or that the Agency identify select questions. With an RFP, the City would be requesting a lot of detail, including a business plan. He said that it would take a lot of work to compile the information and complete architectural renderings. He said that he would not be able to take the architectural design and transfer it elsewhere if he was not selected to proceed with the police facility. This would result in money being lost and not recovered. He said that he would not want to negotiate with the City until it decides to proceed with exclusive rights to negotiate with the proposal selected. He said that he would not like to enter into a bidding war nor throw his negotiating cards on the table until such time that he enters into negotiations with the City.

Mayor Kennedy did not know how the Agency could make a decision without knowing what is being offered for the police facility.

Mr. Acevedo said that once you go through the RFP process and the City enters into the exclusive right to negotiate and that negotiations could still fall through with whomever the Agency selected depending on the terms. He said that the terms may not be acceptable given the structure of the building. He noted that the police facility is a two-story structure and that it has been proposed to him that given the period that it was built, it may not be an acceptable two story building and that it may need to be turned back into a one story building, given code requirements. He felt that there were different issues that could

come into play during negotiations. Therefore, there could still be a fall out during negotiations even if one goes through the RFP process.

Executive Director Tewes indicated that the City has an appraisal for this piece of property but that it is a year or so old.

Vice-chair Chang said that it would be difficult to select an individual to proceed with a project without knowing how much a user would be willing to pay for the facility.

Executive Director Tewes said that staff is recommending an RFP process that would answer questions for the Agency Board. He noted that Mr. Acevedo identified at least one area that is common to all proposals where the technical assistance might be useful (e.g., code analysis). He requested that Mr. Acevedo forward a copy of the e-mail referenced to this evening to the City Clerk so that it can be made part of the record.

Rick Page indicated that he is one of the SOI applicants. He said that he would agree to abide by the process. He indicated that this is the first he has heard that there would be City assistance and appreciated this fact. He said that he has put together a team that would help him through the process.

No further comments were offered

Agency Member Tate said that the EDC tried to address the concerns raised by Mr. Acevedo, specifically the concern with laying out a lot of money to proceed with an RFP process. He said that the EDC discussed the need to have an idea of what the design would be in order to judge it and compare it to other designs. He did not know where the \$10,000 estimate comes from. He did not know how else the Agency would be able to evaluate the proposals without knowing how the proposals would look and compare them to each other. The EDC went further to address the concern in terms of putting some money into the process to make sure that what is common across all of the proposals (e.g., building structural issue). He did not know how the City would be able to compare a design against another design without knowing what the project would look like.

Vice-chair Chang inquired whether the Agency has a selection criterion in place. She also inquired how a price was incorporated into the process.

Agency Member Carr said that a selection criterion has not been established for the process. The EDC is recommending that it be allowed to review the RFP with staff and develop the selection criteria/process. He felt that an entire package needs to be put together and that the package is not based solely on price or design. He noted that this is a public process versus a private sector process. Therefore, the process has to take all these factors into account.

Chairman Kennedy felt that a selection criteria would need to be put into place in order for individuals to put a proposal together. He inquired whether there were other selection models that have been used in other projects or other cities.

Executive Director Tewes said that this process is uncommon to Morgan Hill as the City has not typically been involved in disposing property in a developer selection process. He said that the development selection will be a public judgment about all of the combinations of factors that would result in the best project for Morgan Hill. He indicated that there are other agency models that the City could consider for the development selection.

Agency Member Tate said that it was his sense that Vice-chair Chang wanted to place a high level of importance on what individuals are willing to pay. He felt that it would be helpful for the EDC to receive input from the Agency in order to put together a selection process criterion.

Chairman Kennedy said that the most important feature or qualification that he would like to see is the ability for this facility/use to be a focus and attraction for the downtown. He felt that it would be important for a project to bring business and foot traffic into the downtown. Whichever of the three proposals does this is the one that he believes should be weighted the highest. The second criteria would be the price that the proposer is willing to pay. He felt that these two criteria need to be weighed closely. He recommended that a weighted criteria evaluation system be considered. He said that he would be willing to give up a little in price in favor of a longer term advantage for the downtown. He would be willing to support a project that would bring in a greater return.

Agency Member Tate inquired whether Chairman Kennedy wants to quantify what a “little bit” would be in this regard before proceeding with an RFP or whether an RFP should be put together in such a way that some subjective judgment is allowed to evaluate the proposals. He said that the EDC was contemplating heading toward the second alternative process.

Chairman Kennedy did not believe that the Agency could incorporate a quantitative rating at this point.

Vice-chair Chang said that although money is important, she agreed that it would fluctuate according to the project. Should the City sell the property at 50% of the appraised value, the City would be giving the property away and may raise questions from the public. She felt that the appraised value at 10% ± is the area that allows fluctuation. She stated that she would count on the EDC to come up with a reasonable criteria.

Executive Director Tewes indicated that the Redevelopment Agency is authorized to sell property at less than the fair market value. When the Redevelopment Agency does so, the Agency must provide a “Fair Reuse” appraisal. He said that after the City goes through the exclusive right to negotiate and staff brings back the development agreement to the Agency Board, a report will be presented and that a public hearing would need to be conducted so that the questions raised by Vice-chair Chang about public perception are addressed. Addressed would be the public value that would be gained by selling this property for less than its fair market value but at its fair “reuse” value. He said that Section 33433 of the Redevelopment Law requires this report and a public hearing before getting to the end of the process.

Chairman Kennedy felt that this was a classic use of Redevelopment Agency property. He felt that there should be several models that can be used as a model by the City.

Vice-chair Chang inquired whether the price would be included in the RFP.

Executive Director Tewes said that it might be possible that all three proposers may prefer to purchase the property. However, when the Agency authorized this development selection process, it wanted to be open to the possibility that the proposers may want to lease the property and not own it. The City wanted to be open to these kinds of proposals as well. He said that the details of a real estate transaction will be identified through the remaining steps of the process.

Chairman Kennedy recommended that it be asked what proposers would be willing to pay on a lease and a purchase basis.

Executive Director Tewes said that it is equally important for the public to be mindful of the process by which the Agency came to its conclusions. He stated that the public needs to understand that appropriate development risks are being recognized and that the rates of return for the developer are reasonable rates of return. Therefore, the City would need to review the proposers' finances as well.

Vice-chair Chang inquired whether the Agency Board would be given the SOI applicants guidelines/criteria.

Executive Director Tewes said that it would be an appropriate conversation for the Agency Board to have and provide direction to the EDC as it develops the RFP. He stated that it might be conceivable to set a minimum expected sales price. An individual may wish to purchase the facility if financial assistance is offered for tenant improvements. He felt that the City has to evaluate the economics of the entire deal and not just one aspect.

Chairman Kennedy noted that the RFP criteria does not include: 1) the value of the project to the downtown; and 2) how much will an applicant be willing to pay for the property/facility.

Mr. Toy indicated that the Agency Board's criteria would be answered as part of the RFP process. He said that some of the information submitted would be needed in order to evaluate the benefit to the City. He stated that the business plans and the exterior elevations would help the Agency Board determine if a project is consistent with the downtown plan.

Executive Director Tewes indicated that staff will include these two criteria in the RFP submittal requirements.

Chairman Kennedy stated that these two pieces of information would be important parts of the submittal.

Agency Member Tate requested direction from the Agency Board as to whether the City should go directly to RFP or whether the EDC needs to develop an RFP concept, incorporating criterion around it, returning to the Council before proceeding further.

Chairman Kennedy stated that it would be his preference to ask that the EDC work with staff on a selection criteria and that this return to the Council for its consideration. He stated that he was comfortable with the process, particularly having heard the Executive Director's comments about other Redevelopment Agency projects and processes used.

Action: *It was the consensus of the Council to **Direct** the Economic Development Committee to develop a selection criterion, working with staff. The Committee is to return to the Agency Board with the selection criterion for its review and consideration.*

City Council Action

PUBLIC HEARINGS:

15. HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 57 EAST SECOND STREET

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy opened the public hearing. Erin Gil, property owner, requested that the Council allow him to pay in lieu fees for under grounding utilities on his property. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Sellers absent, **Granted** the Exemption to the Requirement to Underground Utilities With Payment of In-Lieu Fees for the Proposed Development at 57 East Second Street.*

Mayor Pro Tempore Chang and Council Member Tate indicated that they would be stepping down from participating in agenda items 16-18 due to conflicts of interest.

City Manager Tewes informed the Council that staff is suggesting that the Council open the public hearing solely for the purpose of continuing the items to July 16, 2003. He said that there is a question as to whether the Council needs three members of the Council to open and continue the hearings for the three Measure P appeal applications.

Acting City Attorney McClure indicated that three Council members are needed to open and continue the public hearings. He felt that it would be appropriate for the two Council members that would recuse themselves to flip a coin to determine who would be participating in the Measure P hearings, invoking the Rule of Necessity. He noted that Council Member Tate would be participating in the Measure P hearings based on the flip of a coin.

Mayor Pro Tempore Chang excused herself from the Council Chambers for items 16-18.

16. MEASURE P APPEAL APPLICATION AP-03-01: EAST DUNNE-DEMPSEY

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Sellers absent, Continued the Public Hearing to July 16, 2003.*

17. MEASURE P APPEAL APPLICATION AP-03-02: BARRETT-ODISHOO

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Sellers absent, Continued the Public Hearing to July 16, 2003.*

18. MEASURE P APPEAL APPLICATION AP-03-03: WEST EDMUNDSON-PINN

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Sellers absent, Continued the Public Hearing to July 16, 2003.*

PUBLIC COMMENT

Action: *By consensus, the City Council/Agency Board Agreed to Re-open the Public Comment portion of the meeting.*

Shan Zhu, resident of Sunnyvale, brought to the Council/Agency's attention a lawsuit in an effort to stop atrocities taking place in China and to the situation being faced by a U.S. hero, Dr. Charles Lee. He indicated that in early June 2003, Congressman Tom Lantos, San Mateo, initiated a "Dear Colleague" letter regarding an Amicus Brief with the U.S. District Court in Illinois. The letter urged the Court to proceed with the lawsuit charging the former Chinese Communist leader with genocide, crimes against humanity and other crimes. He stated that as of June 27, 54 members of the U.S. Congress have signed the letter. He requested Council assistance in the efforts to stop the genocide and to help bring Dr. Charles Lee back to the U.S., defending the fundamental principals of this country of freedom and justice for all.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 7:57 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY